# CCRB INVESTIGATIVE RECOMMENDATION

Investigator:	Te	eam:	CCRB Case #:	V	Force	<u> </u>	Discourt.	U.S.
Caitlin Schwartz	So	ıuad #11	201411366	Ø	Abuse		O.L.	☐ Injury
Incident Date(s)	Lo	ocation of Incident:		P	Precinct:	18	Mo. SOL	EO SOL
Sunday, 11/02/2014 3:30 PM					121	5	5/2/2016	5/2/2016
Date/Time CV Reported	C	V Reported At:	How CV Reported:	:	Date/Time	Rec	eived at CCl	RB
Sun, 11/02/2014 4:38 PM	IA	ΔB	Phone		Fri, 11/07/	2014	3:28 PM	
Complainant/Victim	Type	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. LT Thomas Smith	00000	939495	121 PCT					
2. POM Joseph Curto	03697	950264	121 PCT					
3. An officer								
Witness Officer(s)	Shield No	Tax No	Cmd Name					
1. POM John Falzarano	08668	948951	121 PCT					
2. POM Michael Simone	11176	948136	121 PCT					
Officer(s)	Allegation				Inve	stiga	ator Recon	nmendation
A.LT Thomas Smith	Abuse: Lt. 7 § 87(2)(b)	Thomas Smith entered in Staten Island						
B.POM Joseph Curto	Abuse: PO J § 87(2)(b)	Joseph Curto entered in Staten Island						
C.LT Thomas Smith	Discourtesy	: Lt. Thomas Smith s	poke rudely to § 87(2)(	(b)				
D.LT Thomas Smith	Force: Lt. T	homas Smith used ph	nysical force against	§ 87(2	2)(b)			
E. An officer	Force: An o	fficer used pepper sp	ray against § 87(2)(b)					

### **Case Summary**

On November 2, 2014, at 3:16 p.m., Lt. Thomas Smith and PO Joseph Curto responded to in Staten Island after receiving a radio run regarding an assault in progress. Lt. Smith and PO Curto had responded to this location twice previously that day, first in regards to an assault, and later in regards to an emotionally disturbed person. Multiple 911 calls had originated from the location reporting that a male was beating his mother and daughter at the location (encl. X). Lt. Smith and PO Curto were permitted to enter the apartment (Allegations A and B). Immediately upon entering the apartment, Lt. Smith allegedly spoke rudely to \$87(2)(b) two of the occupants of the house. Lt. Smith allegedly made various discourteous remarks throughout the incident (Allegation C). The officers were informed that sister and the victim of the assault, was on the second floor, and they went upstairs to speak with her. The officers began looking for \$87(2)(b) brother and the alleged perpetrator of the assault. Eventually § 87(2)(b) was considered to be in commission of obstruction of governmental administration, \$37(2)(b) resisted arrest, and alleged that Lt. Smith elbowed her in the stomach, slammed her down to the floor, and stepped on the right side of her face with his boot (Allegation D). While \$87(2)(b) was on the floor and officers struggled to handcuff her, an officer pepper sprayed her (Allegation E).

provided a video she recorded on her cell phone during the incident, but it did not capture any of the allegations, only the incident's aftermath.

#### **Mediation, Civil and Criminal Histories**

This case was unsuitable for mediation. A search of the NYPD Booking and Complaint system on June 18, 2015, indicated that \$87(2)(b) has no arrest in the past ten years (encl. 17A). [\$87(2)(b)] [\$87(2)(b)] [\$87(2)(b)] [\$87(2)(c)] [\$87(2)(c)]

#### Civilian and Officer CCRB Histories

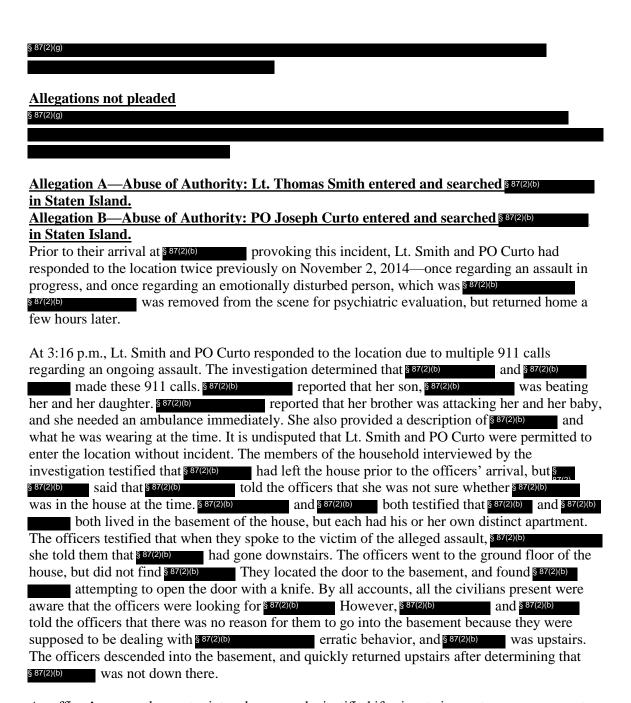
- This complaint is \$87(2)(b) and \$87(2)(b) and \$10(2)(c) and \$10(2)(c)
- Lt. Smith has been a member of the NYPD for nine years. In case number 201307074, premises entered and searched; and discourtesy allegations were substantiated against Lt. Smith. The Board recommended instructions for both substantiated allegations. For the premises entered and searched allegation, the NYPD disposition was listed as no disciplinary action, but instructions were imposed as a penalty. For the discourtesy allegation, the NYPD disposition was also instructions, but no penalty was imposed (encl. 4A). PO Curto has been a member of the NYPD for three years, and has no allegations substantiated against him (encl. 4B).

## **Findings and Recommendations**

## **Explanation of Subject Officer Identification**

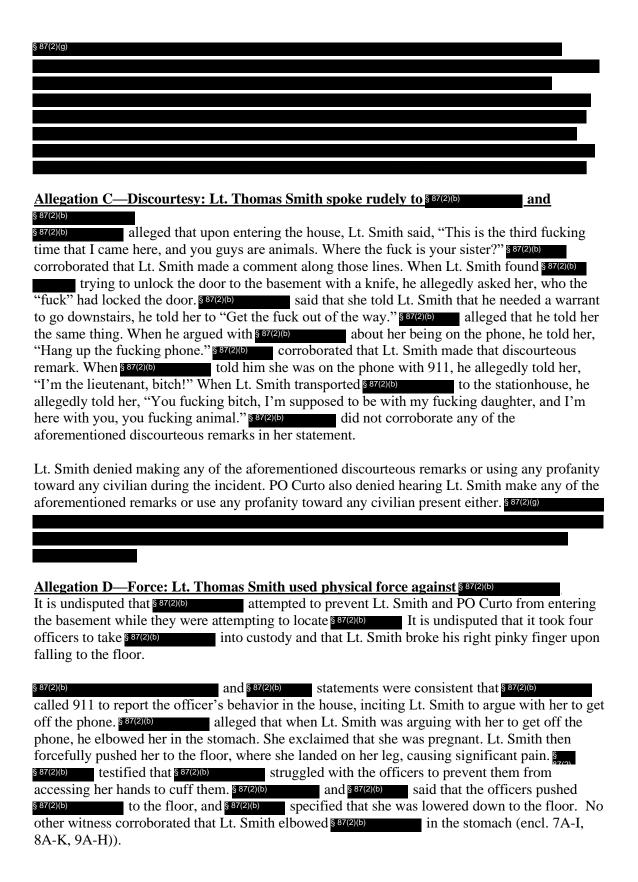
did not see which officer pepper sprayed her. The officers involved in this case either did not recall who used pepper spray or did not recall any was used. §87(2)(9)

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An officer's warrantless entry into a home can be justified if exigent circumstances are present or a civilian provides consent to enter. The gravity or violent nature of the suspected offense, the reasonable belief that the suspect is armed, probable cause to believe that the suspect is in the premises being entered, a likelihood that the suspect will escape and the peaceful circumstances of the entry are factors analyzed in determining whether exigent circumstances were present at the time of an officer's warrantless entry. *People v. McBride*, 14 N.Y.3d 440 (210) (encl.1A-G). The emergency aid exception permits officers' warrantless entry into a home to render emergency assistance to an injured occupant or prevent imminent injury to an occupant. *Kentucky v. King*, 131 S. Ct. 1849 (2011) (encl. 2A-O).

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Lt. Smith denied taking such actions, and PO Curto did not observe Lt. Smith elbow struggle Lt. Smith and PO Curto testified that struggle with the officers to impede their efforts to handcuff her. Lt. Smith also testified that pushed and kicked him and the other officers. Although struggle was the only person under arrest at the location, it took the efforts of four officers to get her cuffed. Lt. Smith fell to the floor as a result of struggle pushing him, and PO Curto testified that the officers fell the floor along with struggle to their backs indicates that PO Curto, PO Simone and Lt. Smith all fell to the floor as a result of struggle flailing her arms and pushing the officers. PO Curto and PO Simone's falls caused them to injure their backs, and Lt. Smith's finger broke as a result of the officer's falling on top of it. Lt. Smith's injury required surgery and an extended hospital stay. Line of duty status was designated for all three injured officers. PO Falzarano documented in his memo book that struggle causing injury to PO Curto, PO Simone and Lt. Smith.
received medical treatment at \$87(2)(b) following the incident. She complained of knee pain, and was found to have knee and foot contusions. She did not sustain any other significant injury. She made no complaint of abdominal pain.
§ 87(2)(g)
Allegation E—Force: An officer pepper sprayed \$87(2)(6)  It is undisputed that an officer pepper sprayed \$87(2)(6)  While she resisted arrest. Patrol Gide Procedure 212-95 authorizes officers to use pepper spray when they reasonably believe its use is necessary to protect themselves or others from the unlawful use of force, establish physical control of a subject resisting arrest, and effect said arrest. Officers should consider the use of pepper spray as a useful alternative to reduce potential injury caused by physical force (encl. 3A-D).
§ 87(2)(g)

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Team:		
Investigator:		
Signature	Print	Date
Supervisor:		
Title/Signature	Print	Date
Reviewer:		
Title/Signature	Print	Date
Reviewer:		
Title/Signature	Print	Date